

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

i.N. (11/05/89), a minor,)	CASE NO.: C07-0467-RSM-MAT
)	
Petitioner,)	
)	
v.)	ORDER STRIKING PETITIONER'S
)	RESPONSE TO ANSWER
NEHEMIAH MEAD,)	
)	
Respondent.)	
_____)	

On November 8, 2007, petitioner filed a response to respondent's answer to petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The response, as discussed below, was due no later than November 5, 2007. The Court, having considered petitioner's response and the balance of the record, does hereby find and ORDER:

(1) On July 17, 2007, the Court issued an Order that directed respondent to file an answer to petitioner's habeas petition. (Dkt. No. 8). In that Order, the Court set forth the procedure for the filing of briefs in this matter as follows:

The answer will be treated in accordance with Local Rule CR 7. Accordingly, on the face of the answer, respondent shall note it for consideration on the fourth Friday after filing. *Petitioner may file and serve a response no later than the Monday immediately preceding the Friday designated for consideration of the matter*, and respondent may file and serve a reply no later than the Friday designated for consideration. See also Local Rule CR 4, concerning filing and service in general.

(*Id.* at 2) (emphasis added)

01 Respondent filed his answer on October 18, 2007. (Dkt. No. 14). In accordance with the
02 Court's Order of July 17th, respondent noted the answer for consideration on Friday, November
03 9, 2007. The Monday preceding this date was November 5, 2007, and was the last day on which
04 petitioner could file her response without requesting an extension of time.

05 Petitioner, as mentioned, filed her response on November 8, 2007, and it is, therefore,
06 untimely. (Dkt. No. 18). Petitioner does not acknowledge that her response is untimely as the
07 response does not mention the issue of timeliness, but rather addresses exclusively the substance
08 of respondent's answer. Thus, the Court cannot construe the late response as a motion for an
09 extension of time. In addition, the Court notes that if petitioner were to file such a motion, the
10 standard she would have to meet would be "excusable neglect" because the time period for filing
11 the response has already expired. *See* Fed. R. Civ. P. 6(b). In general, inadvertence or oversight
12 by counsel is not sufficient to meet this standard. *See, e.g., Davidson v. Keenan*, 740 F.2d 129,
13 132 (2nd Cir. 1984) (inadvertence or oversight of counsel does not constitute "excusable neglect"
14 that might justify an extension of time for filing papers under Fed. R.Civ. P. 6(b)).

15 (2) Accordingly, the Clerk shall STRIKE petitioner's response (Dkt. No. 18) as
16 untimely. In addition, the Clerk shall send copies of this Order to counsel of record and to the
17 Honorable Ricardo S. Martinez.

18 DATED this 9th day of November, 2007.

19
20 
21 Mary Alice Theiler
22 United States Magistrate Judge